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and State Congress. House. Committee on the
Judiciary

FEES OF WITNESSES AND JURORS

HEARING

BEFORE THE .

COMMITTEE ON THE JUDICIARY

gress. **HOUSE OF REPRESENTATIVES**

SIXTY-NINTH CONGRESS

FIRST SESSION

ON

**H. R. 70; H. R. 120; H. R. 5216; H. R. 5817;
H. R. 6092; and H. R. 8384**

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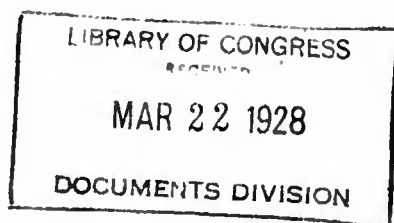
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SIXTY-NINTH CONGRESS

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FEES OF WITNESSES AND JURORS

HOUSE OF REPRESENTATIVES,

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,

Washington, D. C., Friday, February 5, 1926.

Subcommittee No. 2 met at 10.30 o'clock a. m., Hon. William D. Boies (chairman) presiding.

The committee had under consideration several bills relating to the increase of pay to witnesses and jurors in the Federal courts.

Mr. BOIES. Gentlemen, inasmuch as there seems to be very great interest in regard to the bills that are pending before this subcommittee at this time, we thought we better have these hearings taken down for the purpose of being printed. This is a meeting of Subcommittee No. 2 for the purpose of hearings on H. R. 70, H. R. 120, H. R. 5216, H. R. 5817, H. R. 6092, and H. R. 8384. These are the only bills submitted involving the subject, of which I have any knowledge.

Inasmuch as the Attorney General has filed his letter recommending H. R. 120, we might hear Mr. Burtness on that bill.

(The letter referring bills to the subcommittee is as follows:)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D. C., January 21, 1926.

HON. WILLIAM D. BOIES,

House of Representatives, Washington, D. C.

DEAR JUDGE BOIES: I am referred herewith to your subcommittee the following bills with reference to the fees of witnesses and jurors: H. R. 70, H. R. 120, H. R. 5216, H. R. 5817, H. R. 6092.

May I also say that I am not setting any date for a meeting of the general committee until February 3, with a view to giving the subcommittees an opportunity to consider legislation referred to them, and if possible make a report at that time.

If you desire to hold hearings on any of these bills, I am sure Mr. Jameson the clerk, will be glad to arrange a date for you.

Very truly yours,

GEO. S. GRAHAM.

STATEMENT OF HON. HARRY B. HAWES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

MR. HAWES. Mr. Chairman, Mr. Burtness and I are both on the Committee on Interstate and Foreign Commerce, which is in the middle of an important hearing this morning, and I want to give my approval to his bill and make a brief statement so that I can return to the hearings of that committee, if it will suit you.

MR. BOIES. That will be satisfactory to the committee.

MR. HAWES. My bill, H. R. 70, relates exclusively to the per-diem pay of the juror, asking for an increase of from \$3 to \$6 a day. The members of this committee are all lawyers, familiar with the increased cost of living, the raising of the wages of all classes of labor of Government officials of every class, and in my State we are having a very serious situation created by the fact that in the eastern district of Missouri we draw our jurors from some 48 counties and in the western district we draw our jurors from some 66 counties, and the men are called in, high-class men are usually selected, and they cannot possibly live on \$3 a day. They can hardly put up at a respectable hotel at that price, and I desire to file with the committee and make a part of the record a statement of Judge Charles B. Faris of the eastern district of Missouri, a man of great learning and high standing, recommending this bill; a statement of Judge Charles I. Davis, of the same district, a man of attainments and distinction, and Mr. James J. O'Connor, the clerk of the court, who has been clerk of that court for many years. I simply want to file these and as that they be made part of the record and to state that after looking over the bill introduced by Mr. Burtness, which has received the approval of the Attorney General's department, I believe that his bill is more inclusive and is a better bill than mine and that provision should be made not only for jurors but for witnesses. That is all I desire to say, Mr. Chairman. Thank you.

MR. GORMAN. These letters indorse your bill?

MR. HAWES. Yes.

(The letters submitted by Mr. Hawes are here printed in the record, as follows:)

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
St. Louis, January 30, 1926.

DR. HARRY B. HAWES,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN: In reply to your request for my views on your pending bill to increase per diem of grand and petit jurors in Federal courts \$6 a day, I beg to say that the bill ought to pass. Below are a few reasons for this view:

The present situation is well-nigh intolerable. There are in my district 48 counties and the city of St. Louis. Necessarily in each of the three divisions many jurors must be summoned from the rural districts. Those who are required to attend court at St. Louis can not find board and lodging of a decent sort for the present pay of \$3 a day. So they must pay out of their own pockets a part of their expenses for subsistence in order that they may serve as jurors without wages. The result is that it is almost impossible to get a jury or to keep one in attendance.

Farmers, mechanics, and laboring men come to me and beg off because they can not afford to serve, and members of the last two classes often beg to be let off from service because they are dependent for the support of themselves and their families on their daily wages, and if they do not work their families do not eat.

If I were allowed by law to hand pick jurors wholly from among the rich— from street-corner bums the situation might be different, since these two classes are the only ones who can well afford to serve. As to one residing in the city wherein the court is held, the situation is not quite so bad; but it is still a serious hardship to take a business man from his own affairs for a month at a wage of \$18 a week. In the current term I have had a petit jury present since October. I have had to call three panels, which is the statutory limit for a term. So petit jurors usually serve a month or a little more. Sometimes a grand jury must be kept two or three months in a term. To this situation have courts been driven by the criminal legislation—the term may be a little ambiguous, but let it stand—during the last 10 years, which has increased the number of such cases some 600 per cent in this district. I appreciate of course that a patriotic citizen ought to be willing to render some service gratis to his country, like working four days on the public road, say. But he ought not to be required to work a month at a wage not sufficient to feed and lodge himself alone.

These hurried views express some of the many reasons why your bill ought to pass.

Sincerely,

C. B. FARIS,
United States District Judge.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
St. Louis, January 29, 1926.

DR. HARRY B. HAWES,
Member of Congress, Washington, D. C.

DEAR SIR: It has come to my attention that there is a bill pending to increase the pay of grand and petit jurors from three to six dollars per day. The jurors serving in the Federal courts are required by the law to be drawn from the body of the district and can not be taken exclusively from among the inhabitants of the county where the court sits. This results in a great number of men being away from home at the time they are serving on the jury. By the time their living expenses are met, they have nothing left out of their per diem. The kind of men that should be on the jury are able to earn a substantial wage or salary in their usual occupation. To be taken from their business and put into jury service with no compensation after their expenses have been paid is felt to be a great hardship. It is not necessary that they earn as much money while serving on the jury as they earn in their several occupations. Nevertheless, they would approach the discharge of their duties as jurors in much better way if they were only fairly compensated for their time while in attendance upon court.

I therefore hope that Congress will see fit to provide a larger per diem than jurors are now receiving.

Respectfully yours,

CHARLES B. DAVIS.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
St. Louis, Mo., February 3, 1926.

HON. HARRY B. HAWES,
Member of Congress, Washington, D. C.

MY DEAR CONGRESSMAN: 1. Your telegram of the 29th ultimo, requesting that I express an opinion as to the necessity for legislation such as proposed in H. R. 70 for consideration of the Committee on the Judiciary, was duly received, but by reason of the press of official matters I was unable to comply with your request sooner.

2. In my estimation legislation such as proposed in this bill will remedy an acute situation in the Federal courts nisi. The present per diem compensation of jurors in the Federal courts was fixed a good many years ago during a period when conditions of living, etc. existed which rendered a per diem allowance of \$3 for such service compensatory in the strict sense of this term.

3. Jurors, petit and grand, in the Federal courts, by reason of the complexity and important character of the major portion of the questions submitted to them for determination, usually are not drawn from the manual laboring class but are persons engaged in agricultural, office, executive or commercial duties or pursuits requiring the exercise of business judgment and intelligence. In a good many instances when these persons are drawn for jury service in the Federal courts not only a heavy financial loss in connection with the employment or business is entailed upon them, but where it is necessary for them to travel from their homes in some rural section of the judicial district to the large centers of population where the Federal courts are usually held the present allowance of \$3 per day and 5 cents per mile is grossly inadequate to compensate them for their actual outlay for travel, board, and subsistence. It is not, therefore, in the least astonishing that the majority of those drawn for such jury service seek by excuse or otherwise to evade or be relieved therefrom.

4. Under the present conditions of living it is well-nigh impossible to obtain a decent room in a respectable hotel in the larger centers of population for less than \$2.50 or \$3 per day, leaving those jurors who reside at places other than the place where the Federal court is held, 50 cents or nothing per day for subsistence, laundry, and other incidentals, resulting in an actual financial loss to those persons in performing the duty imposed upon them. Not only is the present per diem allowance grossly inadequate to compensate rural jurors, but such inadequacy of allowance applies with equal force to the persons drawn for jury service who reside in the same city in which the court is held.

A good many of these city jurors I have found are employed on a commission or some analogous basis, and when required to serve as jurors in the Federal court here for extended periods, in some instances as much as a month or two, the financial loss which is occasioned to these jurors in undertaking to perform their duties as citizens can readily be appreciated.

5. Considerable intense complaint and criticism has been voiced from time to time by jurors in this court as to the grossly inadequate compensation allowed jurors for service in the Federal courts.

6. While I feel that it is not the intention or desire of Congress to provide full compensation for financial loss occasioned in connection with jury service in the Federal courts, nevertheless I feel the per diem allowance in this respect should be somewhat more closely commensurate with the loss sustained than is at present provided.

7. Having been in more or less daily contact for some few years with jurors serving in the Federal court here, from observation and experience gained by this contact I believe the proposed legislation referred to in your telegram is absolutely necessary and will remedy an unfortunate condition now existing in the Federal courts.

8. All of which is respectfully submitted.

Respectfully yours,

JAMES J. O'CONNOR, Clerk.

**STATEMENT OF HON. OLGER B. BURTNESS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NORTH DAKOTA**

Mr. BURTNESS. Mr. Chairman and gentlemen of the committee, as your chairman has said, H. R. 120, a bill introduced by me on the opening day of this session of Congress, has the endorsement of the Attorney General, as shown by a letter addressed to Hon. George S. Graham, chairman of the committee on the judiciary, dated January 29, 1926, which letter I ask to submit at this time for the record.

Mr. BOLES. Very well.

Mr. BURTNESS. The letter reads as follows:

JANUARY 28, 1926.

HON. GEORGE S. GRAHAM,

Chairman, Committee on the Judiciary,

House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: In reply to your letter of the 17th ultimo, with which you submitted for my consideration and recommendation H. R. 120, a bill introduced by Mr. Burtness, fixing the fees and subsistence allowance of jurors and witnesses in the United States courts. I have the honor to say that the provisions of this bill appear to be identical with those of H. R. 6578, introduced by Mr. Burtness at the last session of Congress, the enactment of which I recommended. It was then pointed out that this department regarded existing provisions of law relating to compensation and allowances to jurors and witnesses as unjust and inadequate and as tending to jeopardize the success of criminal prosecutions. It was estimated that, should the provisions of H. R. 6578 be enacted into law, there would be an increase in expenditures of approximately \$1,300,000 per annum; but the department expressed the opinion that this additional expenditure was both necessary and justifiable and the Director of the Bureau of the Budget reported that such additional expenditure would not be in conflict with the financial program of the President.

There is nothing new to add. The need for the proposed legislation is as great as ever. The additional expenditure which its enactment will entail is estimated, as before, at \$1,300,000. Under date of the 25th instant the Director of the Bureau of the Budget informs me that since H. R. 120 is for the same purpose and is similar in all respects to H. R. 6578, a favorable report on H. R. 120 will not be in conflict with the financial program of the President.

I, therefore, recommend and urge that H. R. 120 be enacted.

Cordially yours,

_____, *Attorney General.*

A similar bill was approved by Mr. Justice Stone, when he was attorney general, shortly prior to his appointment to the Supreme Court.

The first question that would naturally present itself, therefore, is just what is the law now, and what are the proposed changes embodied in H. R. 120.

The law at the present time is found in a number of statutes. The sections in the Revised Statutes are 842 and 852, but there is a later provision in the law, found in 32 Stat. L. 396, being the act of June 1, 1902, relating to jurors; and then there is also a special provision in the law known as the act of May 27, 1908, (35 Stats. L. 377), which provides special mileage for travel by stage line or private conveyances in certain States of the Union.

Outside of certain specific provisions, we find the law is this: A juror receives \$3 per day for his services as a juror; he is paid 5 cents a mile for the distance necessarily traveled in going to court and returning therefrom.

Mr. BOIES. That applies to grand jurors as well as to petit jurors.

Mr. BURNESS. That is correct. The juror is paid not only for the time that he is attending the court, but for the time necessarily consumed in going to court and returning therefrom.

The witnesses are paid a per diem of \$1.50 per day, but are paid not as jurors are paid, for the time necessarily consumed in going to court and returning therefrom, but are paid only for the days that they are actually in attendance before the court. They are, like the jurors, allowed 5 cents a mile by way of mileage. You can plainly see, therefore, the situation with reference to witnesses. A witness in many of the fraud cases—bank frauds, for instance, or cases where the charge is using the mails to defraud—may well be taken from one end of this country to the other. I know in my State witnesses have often been brought, for instance, from California requiring three or four days' time to get there. I have letters in my file here from judges of the United States courts, United States district attorneys, and others giving specific instances of that kind.

A witness gets on the train and he pays on the average 3.6 cents per mile for his railroad ticket. His Pullman ticket costs him 1.5 cents a mile. That makes a total of 5.1 cents per mile that he actually has to pay out, simply for the privilege of traveling. He then has his meals to pay for. Even though it takes him three or four or five days to get to the place where a court is being held, he is paid absolutely nothing for the time that is consumed, with the result that he is out not only one-tenth of a cent a mile upon his railroad ticket but he is out his time and he is out the amount of money which he pays for his meals, and when he gets to the place where court is held, he is paid the munificent sum of \$1.50 a day, and we all know that there are probably very few towns in the country where Federal court is held where that witness can go to a hotel and get a room for that amount of money, to say nothing whatsoever of his meals.

Gentlemen, it seems to me that merely stating the proposition is sufficient to indicate the tremendous need for some change. A witness who is subpoenaed by the arm of the Government to appear in a criminal prosecution and is treated in that way can not be blamed very much, perhaps, if he has not always a friendly attitude to the court or to his Government. He often proves a difficult witness in various respects for the Government. He should receive fair treatment.

I have mentioned this with reference to witnesses. Some have said that the jurors are worthy of even more consideration than the witnesses. That, of course, is a matter of judgment. In my own case, I think the witnesses are the ones who are entitled to first consideration, but the situation is almost as bad with reference to the jurors. They are paid, as I have said \$3 per day. I do not know of any town where Federal court is held where a juror can go to a decent hotel and obtain a room and be able to pay for his meals out of the \$3 per day. I am not one of those who feel that the services of a juror should result in a profit to him; not at all. I think every citizen of the United States owes a duty to his Government and that he should be glad to act as a juror even at some sacrifice when he is called; but we want to remember this, that the very best type of jurors are often men who can not afford to serve at

loss of several dollars per day. I have letters from several judges in my files, and if you would give me the time I would be glad to submit them, who say this, that time and again they are forced as a matter of humanity to excuse jurors from service who simply can not afford to serve because of the small per diem that is allowed, and that as a matter of fact because of the present small per diem that is allowed, the judges are asking for and subpoenaing larger panels at the opening of the courts because they know that many of the jurors will have to be excused.

I submit this as a general proposition that I think would be fair. A juror who is called away from his business or called away from his work or occupation, whether it be on the farm, or as a mechanic in a shop, or cashier or teller in a bank, or clerk in a store, ought to be paid sufficient so that he can engage a reasonable room at a moderate priced hotel, go out and get decent meals, and if he is a person working for wages or a moderate sized salary, he should have sufficient so that he can hire a man in his place at home, so that his serving his government as a juror will not cost that type of man a financial loss. In the case of a business man, a man who is engaged in a substantial business somewhere, of course his service would necessarily involve some sacrifice in any event, and I am not one of those who feel that he should be paid sufficient to take care of that loss.

That brings me to the thought which is in a way the foundation of H. R. 120, because H. R. 120 suggests a plan that has not been used heretofore with reference to paying jurors and witnesses. Under the present situation I take it that most of us will agree that if a man is called as a juror in the town where the court is held, that individual does not sacrifice a great deal by stepping over to the court at 9.30 or 10 o'clock in the morning and reporting there and very often being excused so that he can go back to his business vocation and take care of it, and other times, perhaps in one case out of three or four, actually sitting in the trial of the case.

His sacrifice is little or nothing compared with that of his brother business man who may come from a town 100 miles or 200 miles away, and who can not keep in touch with his business except by correspondence or over the long-distance telephone, and who is often compelled to stay not only two or three weeks, but according to the information which I have obtained from judges throughout the country, sometimes for three, four, five or six months. I think, therefore, it is only proper in the law to make a difference between these two different classes of jurors; and the same agreement which applies to jurors applies to witnesses. So then, what does H. R. 120 do? I have tried to do this. With reference to jurors I have simply provided that jurors who live so far away from the place where court is held that they can not return home from day to day, are to be given a subsistence allowance of \$3 per day. The base per diem fee of all jurors is not changed by this bill from the present base of \$3. The law in that regard is left just as it is, but under this wording a subsistence allowance is granted [reading]:

That jurors and witnesses * * * who attend court or attend before United States commissioners, at points so far removed from their respective residences as to prohibit return thereto from day to day, shall, when this fact is certified to in the order of the court or the commissioner for payment, be en-

titled, in addition to the compensation provided by existing law, as hereinafter modified, to a per diem of \$3 in lieu of expenses of subsistence for each day of actual attendance, and for each day necessarily occupied in traveling to attend court and return home.

In other words, that would allow \$6 per day for those men who attend away from home—

Mr. GORMAN. Does that language in line 4, on page 2, add \$3 to the \$3 fee he already receives, when you use the words "\$3 in lieu of expenses of subsistence?"

Mr. BURTNESS. In lieu of expenses of subsistence, yes; and you will note that it says in line 2, "in addition to the compensation provided by existing law."

Mr. STOBBS. Your clause 1, then, makes no provision for you juror who can go back and forth during the same day from his home to the court or the place where the court is held?

Mr. BURTNESS. That is not exactly correct. It makes no change in the law regarding that juror's per diem and mileage. It does not change his situation a particle from what it is to-day.

Mr. STOBBS. So that if a man is able to go back and forth from his home to the place where the court is held, and yet in doing so the actual expense to which he is put, the loss of his wages or loss of livelihood, he is deprived of during that time, you do not relieve him at all in this bill.

Mr. BURTNESS. Of course the \$3 per day is granted him as a sort of per diem proposition to take care of his loss of time or loss of wage. He will still be paid his \$3 per day.

Let me say that this bill is very moderate, but there are some who may think it goes too far. There are some who may think that it does not go far enough. I am not here pleading specifically for the exact amounts that have been suggested in this bill. What I am pleading for is that this committee give relief along this general line, in such amounts as they deem proper and advisable, whether the subsistence allowance be made \$3 a day or some other figure.

Mr. STOBBS. I want to make it clear that the relief you afford by this bill so far as the jurors are concerned, is simply for those jurors who are not able to go home every night.

Mr. BURTNESS. Yes. They need relief the most.

Mr. STOBBS. And then under your section 2 you give there, again, relief under section 1 to witnesses who can not get home at night, but you do not, under section 2, at the rate of 5 cents a mile to take care of the situation where your man comes from California to South Dakota, say, for instance, or North Dakota, at 5 cents a mile. That is not going to be sufficient to pay his actual traveling expenses.

Mr. BURTNESS. I have not proposed to increase the mileage. The department would not recommend an increase in mileage; and the fact is that mileage at 5 cents per mile practically covers his traveling expenses, and if he is then allowed this subsistence allowance of \$3 per day and the per diem of \$2 per day, neither of which a witness is allowed at the present time, he will at least get enough so that he can break even and have a little bit over for his time. As I say, I have made increases as moderate as possible, and yet so as to furnish relief that would be reasonably satisfactory.

Mr. McDUFFIE. You do not furnish \$3 a day for the witnesses; you provide for \$3 a day for the jurors?

Mr. BURTNESS. The base witness fee is by this bill proposed to be raised from \$1.50 to \$2. But the plan with reference to subsistence is identical with the plan proposed with reference to the subsistence of jurors, so that the man to whom Mr. Stobbs refers, to be specific, who might be subpoenaed by a New York court and who lives in California and who is therefore compelled to go across the continent, when he gets there will be paid in this manner. He would be paid 5 cents a mile for his travel allowance, and that would come within one-tenth of a cent per mile of paying his railroad fare and his Pullman ticket. He would receive \$3 for subsistence. Of course the subsistence in a way includes both lodging and meals, but he would have the \$3 subsistence allowance to take care of whatever he might be short from his mileage on his berth and to take care of his meals, and he would get a per diem of \$2 per day for the time necessarily consumed in going to the court and returning therefrom.

Mr. STOBBS. The \$2 a day that is paid is all that is paid for his services, inadequate as it may be?

Mr. BURTNESS. Exactly.

Mr. STOBBS. So on the question of his expense, which is \$3 a day for subsistence and 5 cents a mile for travel, will that cover the actual expense of a berth on Pullman cars and other expenses of a man going from California to New York?

Mr. BURTNESS. I think it would unless he eats more than he ought to eat, and unless he is entirely too liberal in entertaining guests, feeding porters, etc., but he certainly will not have much, if anything, left over to spare.

Mr. BOIES. That sort of a witness is very exceptional as compared with the number of witnesses who generally attend Federal courts?

Mr. BURTNESS. Relatively exceptional, and yet I would not say very exceptional because there are a lot of witnesses of that kind.

Mr. GORMAN. There is no subsistence expense allowed jurors now under the present act.

Mr. BURTNESS. None whatever.

Mr. GORMAN. There is compensation allowed them.

Mr. BURTNESS. Compensation of \$3 a day.

Mr. GORMAN. Is there any danger, in your opinion, by the use of the words "in lieu of expenses," that the compensation which is now paid to jurors might become involved in that interpretation?

Mr. BURTNESS. Not at all because the language is in lieu of the expenses of subsistence, not in lieu of per diem of compensation, but in lieu of expenses of subsistence, and this language is approved by the Department of Justice. In fact this particular language in the bill is the language of the Department of Justice.

In that connection I might give you the history of my connection with legislation of this sort. In the Sixty-seventh Congress I introduced a bill similar to other bills which are now pending before you, simply increasing the per diem of witnesses and jurors, and it did not include this subsistence allowance in any way. I had the matter up with Mr. Volstead, then chairman of the Committee on the Judiciary, and in the interest of the economy program then being waged he urged me not to press the bill at that time, although

he recognized the fact that the witnesses and the jurors were not fairly dealt with, thinking that expenses might come down, etc.

I did not press it particularly then except that I did offer on the appropriation bill an amendment along with the lines of the bills which I had introduced in the Sixty-seventh Congress. My friend from Texas, Mr. Blanton, made his usual point of order to the proposition as being legislation on an appropriation bill, which was sustained. During the following recess I had the matter up with two or three judges out in our section of the country, their clerks, and the district attorneys, and we then hit upon this plan of a subsistence allowance because we did feel that it would be almost unfair to grant the juror who just steps over to the court and who serves possibly one-third of the time a per diem allowance of \$6 a day, especially during those times when the taxpayers have enough of a burden anyway. We felt that allowing a per diem of \$6 for all would rather aggravate the difference which exists now between the sacrifice that is made by the man who attends the court at a distance and the one who just steps over to the courthouse for a few hours a day.

I introduced, therefore, at the opening of the Sixty-eighth Congress two bills, one relating to jurors and one relating to witnesses, embodying this idea of subsistence allowance, but the test I put into those bills for allowing such subsistence was simply the place of residence of the person attending court; those attending court outside of the city of their residence were to be paid the allowance. Those bills were referred to the Department of Justice, and, as it happened, unknown to me, the Department of Justice during the year 1921 had considered this proposition, and had itself decided upon a plan providing for a subsistence allowance and had written a letter to that effect to Senator Knute Nelson, who was at that time chairman of the Judiciary Committee of the Senate. In discussing the matter with the Department of Justice they suggested the language now found in H. R. 120, which is the language approved by a subcommittee of this Judiciary Committee of the House during the Sixty-eighth Congress. Mr. Major was a member of that subcommittee. This entire question was considered at length. Governor Yates was chairman of the subcommittee, and under date of March 27, 1924, sent in its report which I have here, consisting of five or six pages, recommending this very bill which is before you now, except that they left the question as to the exact amount that should be granted for subsistence allowance to the full Judiciary Committee. As I recall it, Judge Hersey as a member of the subcommittee rather felt that the subsistence allowance of \$3 might be a little high, although the consensus of opinion in the committee was that the subsistence allowance should be \$3, and the last sentence in the subcommittee report is as follows:

In the event that the committee is opposed to providing for all the increase suggested at this time, then we are disposed to recommend the lowering of the subsistence allowance to \$2 per day, but otherwise passing the bill as suggested. It is vitally necessary that some relief be granted immediately.

If there is no objection I think it might be well to insert the report made by the subcommittee of last year.

Mr. BOIES. I do not think we should make this printed record too large.

Mr. DOMINICK. I would like to hear from you somewhat on whether or not it will be practicable in operation to have this distinction between the various kinds of jurors, and the same thing, of course, applies to witnesses. I do not see how in the world it is going to be gotten at, especially with all the red tape involved in getting through accounts in the Department of Justice. In other words, to my mind there is one objection that I see. This subsistence will be allowed in certain cases to those persons who attend at points so far removed from their respective residences, who attend court at points remote from their respective residences, as to prohibit return to the places where they live from day to day, and when this fact is certified as to the distance, the dates and times, it is a hard matter to figure out. In these days of highways and automobiles a man can live 40 or 50 miles and it is practicable for him to attend court in the morning and leave in the afternoon. That applies to the man that owns his own automobile. There might be a juror or witness who only lives two or three miles from the place of holding court and he has no means of conveyance or may not have as good a highway. Why should not the man who has his means of conveyance be allowed compensation in subsistence if he uses his gas and oil going and coming.

Mr. BURTNESS. I have given considerable thought to the question you have in mind and I have a few suggestions with reference thereto. I hesitate to make one or two of them for the reason that it would entail additional expense. I might say this generally, first, that I have letters, I believe, from practically 50 United States District Judges. Of those 50, there are only 5 of them who have made suggestions that it might be difficult to carry the purpose of the bill out in its details, and that it might cause considerable trouble for them. I realize, of course, that it would entail some work. While the bill provides that the certificate must be made by the judge, in actual practice the working out of the details would be done by the marshal and the clerk just as the mileage proposition is handled at the present time.

Mr. DOMINICK. Then when the marshal sends in his certificates to the Department of Justice we have a horde of clerks down there to go over those and investigate every one of those certificates.

Mr. BURTNESS. They can not do that under this bill.

Mr. DOMINICK. I do not know whether they can under the bill, but they do that under other laws we have now.

Mr. BURTNESS. The certificate of the court upon the question is in my opinion under this proposed bill conclusive.

Mr. DOMINICK. We have this kind of laws in so far as payments to other witnesses by other courts is concerned. For instance, you had a witness before the United States Commissioner. He certifies to his mileage and the United States Marshall pays it or the United States Commissioner sends that in. Maybe he has paid that witnesses' mileage and here is a little clerk who will go through that and find he has made a mistake of one or two miles and checks up every single one of those accounts.

Mr. BURTNESS. He does not do that now, and I presume the same system would be kept up under this.

Mr. DOMINICK. I had known a United States Commissioner to resign and refuse to attempt to do the work just on account of the trouble they have in their accounts with the Department of Justice.

Mr. BURTNESS. I also know of a United States Commissioner, a very able one, who resigned because of the trouble he had with his accounts, and within the last year. In fact, I had his matter up with the Accounting Office. In that case it was not a question of difficulties with reference to certificates about witnesses and their mileage, but rather with reference to the fees that he was allowed himself. That is very technical, and, in fact, I think most of the difficulties which the United States Commissioners have had with the Accounting Office have been from their very small, meager statutory fees allowed them, and have not related to the mileage of witnesses or their per diem allowances.

Mr. DOMINICK. Do not misunderstand me. I think there ought to be some relief. But the thing that is worrying me is whether it is practicable to leave this matter open to the discretion of the various offices or save time and money otherwise.

Mr. BOIES. Just in observation in that connection. So far as the old law and this will apply to the question of time to return to his residence, that question always must be determined by the marshal and the clerk for the certificate that issues to him.

Mr. BURTNESS. Exactly.

Mr. BOIES. And it involves the same question that is involved in the point you make. There must be someone to govern this proposition. It seems to me when it is certified by the judge and marshal and clerk that that ought to end it.

Mr. DOMINICK. That is where you are going to have your trouble and it seems to me there is just as much reason to make a distinction between, you might say, the intelligence of the witness or the amount of money or financial standing of the juror as it is to make this distinction here.

Mr. BURTNESS. That may appeal to some that way, but that is a matter of difference of judgment. I recognize that these things do not appeal to all of us in the same way, and naturally these matters must be submitted to committees of Congress to adopt a policy.

Mr. DOMINICK. With the flat fees as we have them now, as a matter of fact, there are some people that can not only break even, but probably make a little money out of it.

Mr. BURTNESS. The man who has nothing to do and lives in town where court is held, the man who is the so-called professional juror who tries to get on the pay roll, living in town where court is held may be able to do that, but he is exactly the type we do not want on Federal juries if we can avoid them.

Mr. BOIES. What are you going to do with the man who might ordinarily be able to return to his home in the evening, where he is serving on a jury that is out all night and can not get home?

Mr. BURTNESS. If you will first let me answer that question of Mr. Dominick, I will touch that. The suggestion of Judge Boies made with reference to the discretion now in certain officers with reference to the amount of time required in going to court and returning therefrom as well as the determination of the amount of mileage, it seems to me, applies very forcibly to any discretion that is permitted under this bill. There is, however, one provision here

that I do not like, and that is, the words "so far removed from their respective residences as to prohibit return thereto from day to day."

As I said, my original test was whether they lived in the same city or not. Such would be plainer and easier to carry out administratively but probably would contain more unfair discriminations than this because there are some cities which are very large and others that are comparatively small. I believe the city of Detroit, as we ordinarily speak of it, really consists of a great many actual municipalities, separate and distinct cities as such, and I see there could be some difficulties there that might arise.

If the original test I suggested was the one adopted, there might be an unfair discrimination as between people living in one of the municipalities comprising the community generally known as Detroit and those living in cities like New York or Chicago. But the suggestion that I was going to make is this. I would like to see the word "prohibit" eliminated and to substitute in lieu thereof the words "make it impracticable to," so that the test would be where the witness and jurors live at points so far removed from their respective residences "as to make it impracticable to return thereto from day to day." Personally, I think that would be better, but I do not know how the department would look at it. Then you could give to the judge, or the person acting for him, an opportunity to exercise his best judgment and discretion. A person living 20 or 30 miles away on a good highway, owning his own automobile could "practicably" return to his home in decent weather, while a person who might live 8 or 10 miles out into the country, where there is no highway, could not "practicably" do so, although the distance away might not be so great as to actually "prohibit" him therefrom. In that connection there is a suggestion of one of the judges who have written me in reference to the bill that it might be fair to allow to the man who returns home each night this same mileage allowance of 5 cents each day with a maximum limit of \$3, or whatever other item your committee would accept as the proper allowance for subsistence. If that suggestion were adopted, a man living 10 miles away, returning home each day, would get 3 a day and 5 cents a mile, or a total of \$4; if 20 miles away and returns home would get \$5, and if he lived 30 miles away and returns home he would get \$6 a day just as if he stays in town; but if he lives 40 miles away, the limit for mileage each day could be \$3, which, in addition to his per diem, would amount to \$6, or the same as he would receive if he obtained lodging in town.

Mr. STOBBS. I think Mr. Dominick's point is well taken because I know the difficulty even under the provisions you speak of in the present law where your clerks criticize and raise questions as to the marshal's discretion. Why can not that be cured in this bill or any bill by resolution or by provision in the act that the certification of the judge shall be binding upon the department as to whether a man could or could not go back.

Mr. GORMAN. Shall be conclusive.

Mr. BURNES. I would be glad to write that in.

Mr. BOIES. That would be very convenient because those witnesses are coming in after court finally adjourns and the judge has got to square up with the clerk and marshals as to their attendance.

Mr. STOBBS. The point that Mr. Dominick raises is well taken and prevents some of your clerks here from raising the question as to whether the judge acted properly in the exercise of his discretion.

Mr. BOIES. Why not make it the clerk's certificate on account of the amount of business of the judge?

Mr. DOMINICK. Suppose a man would be able to go home one day and the next day there was a blizzard or a snowstorm or bad weather he would get a double-barrel certificate, one day would not be allowed subsistence and the next day would be allowed subsistence. When those accounts go in, if they go to McCarl, they would want an explanation why John Smith was allowed subsistence for two days and why he was not allowed subsistence the other three days of the week.

Mr. STOBBS. Would not that be cured by saying certificate?

Mr. DOMINICK. I do not believe it is practicable to get everything worked out in the proposition. I will try to make it equitable with the various judges, and I believe if you are going to give any benefit whatever to the jurors or witnesses the only way it is practicable to put them on a per diem basis and give them what we think they ought to have, whether \$4, or \$5, or \$6 a day.

Mr. BURTNESS. My purpose is to get necessary relief.

Mr. BOIES. I do not think a little matter of discrepancy is very serious.

Mr. BURTNESS. It makes a big difference in the cost, that is, the increased per diem allowance of jurors to \$6 a day would mean much greater burden to the Treasury than increasing it along the lines suggested herein, and, of course, the department has been greatly interested in trying to keep the cost down to the minimum at the same time giving the relief so necessary for the proper administration of justice.

Mr. BOIES. If a man gets \$6 a day and goes home he is put to some expense in traveling and also to the expense of maintaining himself at home.

Mr. DOMINICK. It costs him for his lunch during the day.

Mr. BURTNESS. He usually has to eat downtown, anyway.

Mr. STOBBS. In the last analysis the sole question, irrespective of expense, is what is the right thing for us to do?

Mr. BURTNESS. Exactly; and which is the wiser policy to adopt. I know Judge Miller, representing the district of North Dakota, the district which I represent, has made no objection to the subsistence allowance, and told me he did not believe there would be any great objection to it. As indicated, very few of the judges whose replies I have here have raised the question. I have a letter from Martin J. Wade, district judge for the southern district of Iowa, in which he says:

I am heartily in favor of your bill giving some relief to witnesses and jurors. The truth is that I have been in favor for some years of increasing the per diem of jurors so that service would not mean to them a loss of money and from their time. Witnesses likewise should have a reasonable allowance. Your bill is helpful in this direction. Personally, I would be in favor of a bill increasing the allowance beyond the provisions of your bill.

This matter is more than mere dollars and cents. To jurors who are required to serve, the feeling that their allowance is inadequate develops the spirit of discontent and dissatisfaction, which is bad. We insist upon citizens serving as jurors and then treat them in a niggardly way. It has a bad effect.

Judge John R. Hazel, of Buffalo, N. Y., says:

This bill certainly ought to pass. It is a great hardship to the jurors, who oftentimes are summoned to appear before the court from distant parts of the county and are required to pay for their maintenance, and many times their lodging, while they are away from home. At each term of court the plea for excuse from serving is made that they can not afford to sacrifice their daily wage. I am thoroughly in favor of the bill and hope it will pass at the present session.

What I have said about the jurors also applies to witnesses.

Judge Louis Fitz Henry, of the State of Illinois, southern district, Bloomington, Ill., writes as follows:

I am very much in favor of this bill, or one which will give jurors and witnesses in Federal courts any of the much needed relief to which they are entitled.

I am writing both Chairman Graham and Governor Yates of the Committee on the Judiciary.

Judge Cochran, of the eastern district of South Carolina, Charleston, says:

I am in sympathy with the object of this bill. I have several times publicly called attention to this injustice in my charge to the grand jury and otherwise, and have also mentioned the matter to several Members of Congress from this district. The injustice to jurors is so glaring that I can not understand why there should be any objection to increasing their pay. You are at liberty to use this letter, if you desire to do so.

Judge Lowell, district judge, United States courts, Boston, says:

I am heartily in favor of the bill, though I wish it went still further. The district of which I am a judge corresponds with the State of Massachusetts, and in the State courts the jurors are paid \$6 a day. Many of our jurors come from some distance, and your bill will certainly help, although I wish we might be able to pay them all \$6 a day.

Mr. BURNETT. Judge Webster, whom most of you know, having served several terms in Congress, and having been appointed district Federal judge for the United States district which includes the State of Washington, his chambers being at Spokane, Wash., writes as follows:

I take great pleasure in saying that in my judgment this bill is highly meritorious. It constitutes not only an act of justice toward jurors and witnesses in the Federal courts, but in my opinion will greatly facilitate the administration of justice in such courts. During my service on the Federal bench I have felt the wisdom and the necessity for just such a measure as the one you have been pleased to introduce. I sincerely hope that it may receive the favorable consideration of the Congress during its present session.

Here is a letter from Judge Knox, of New York, 232 Broadway, in which he says in part:

I heartily approve the purpose that is sought to be accomplished by your bill. The situation in which witnesses from a distance, who are brought to New York, find themselves while waiting for the disposition of cases in the Federal court, is anything but happy. What actually happens is that they are forced to attend upon court and do not receive from the Government enough money to pay the expenses to which they have been put for coming to court. As you may know, this town is an expensive one in which to live and witnesses coming here from a distance, who are forced to live at hotels during the period of their stay, can not possibly purchase the necessaries to which they are entitled for 3 per day. Very often this condition works a severe hardship upon them.

Next is a letter from Judge Baker of the United States District Court for the Northern District of West Virginia, in which he says:

I have studied this bill most carefully. It is the most equitable solution of the situation that has been called to my attention. We, in this district, choose none but the very highest type of citizens to act as jurors. My opinion has been that any whose personal affairs are of so little importance that he can attend as a juror and feel himself compensated by the allowance from the Government, is not a fit man for the service. By selecting a high type of citizenship from the various counties to act as jurors, I find their verdicts are most satisfactory and just, and verdicts rendered by such a class of jurors are accepted throughout the district without criticism, thereby giving the public generally confidence in courts and juries.

The phase of your bill providing allowance for witnesses is also equitable. However, it does not apply with equal force as that provision as to jurors for the reason that witnesses are ordinarily not compelled to be away from home more than a few days; whereas jurors, in some instances, are kept away a month. However, your suggestion as to pay of witnesses is most commendable. You can rely on my doing anything proper in support of this measure.

A portion of a letter from Judge Morris, United States District Court, Delaware, is as follows:

I think the enactment of this bill into law is highly essential to the proper administration of justice. Without question, if our Government is to endure, be strong, and have the support of its citizenry, it must so act as to make the people know and feel that the Government is just and fair.

I have also in addition to these letters from judges, extracts of some of which I have read, letters from district attorneys and United States marshals.

Mr. BOIES. You might offer for the record a list of judges who favor your bill.

Mr. BURNES. Yes.

(The list referred to is as follows:)

The following United States district judges have indorsed the bill as written:

Hon. Andrew Miller, North Dakota.
 Hon. Martin J. Wade, Iowa.
 Hon. John R. Hazel, New York.
 Hon. Louis Fitz Henry, Illinois.
 Hon. Charles B. Faris, Missouri.
 Hon. Ernest F. Cochran, South Carolina.
 Hon. James A. Lowell, Massachusetts.
 Hon. J. Stanley Webster, Washington.
 Hon. John Clark Knox, New York.
 Hon. J. Whitaker Thompson, Pennsylvania.
 Hon. W. E. Baker, West Virginia.
 Hon. Hugh M. Morris, Delaware.
 Hon. John A. Peters, Maine.
 Hon. Isaac M. Meekins, New Jersey.
 Hon. Claude Z. Luse, Wisconsin.
 Hon. Colin Neblett, New Mexico.
 Hon. Joseph C. Hutcheson, Texas.
 Hon. William A. Cant, Minnesota.
 Hon. Joseph W. Molyneaux, Minnesota.
 Hon. John B. Sanborn, Minnesota.
 Hon. William Hawley Atwell, Texas.
 Hon. Charles I. Dawson, Kentucky.
 Hon. Blake Kennedy, Wyoming.
 Hon. J. C. Jacobs, Arizona.
 Hon. W. N. S. Thomas, Pennsylvania.
 Hon. William B. Sheppard, Florida.
 Hon. John C. Pollock, Kansas.

Hon. James D. Elliott, South Dakota.
 Hon. Ben C. Dawkins, Louisiana.
 Hon. Frederic P. Schoonmaker, Pennsylvania.
 Hon. Orie L. Phillips, New Mexico.
 Hon. George W. McClintic, West Virginia.
 Hon. Rhydon M. Cail, Florida.
 Hon. Frank Kerrigan, California.
 Hon. Frank Cooper, New York.
 Hon. Edwin Yates Webb, North Carolina.
 Hon. Walter C. Lindley, Illinois.
 Hon. R. M. Gibson, Pennsylvania.
 Hon. Adam C. Cliffe, Illinois.
 Hon. Edwin S. Thomas, Connecticut.
 Hon. Edward E. Cushman, Washington.
 Hon. J. Foster Symes, Colorado.

The following United States district judges urge the necessity of increasing fees of witnesses and jurors, but indicate doubt as to the wisdom of the plan proposed:

Hon. Albert S. Reeves, Missouri.
 Hon. Ferdinand A. Geiger, Wisconsin.
 Hon. D. C. Westenhaver, Ohio.
 Hon. L. H. Sibley, Georgia.
 Hon. A. M. J. Cochran, Kentucky.

Mr. BOLES. Proceed.

Mr. BURNES. There are letters coming in every day, and the first which I have inserted in the record gives the names of five judges, Reeves, of Missouri, Geiger, of Wisconsin, Westenhaver, of Ohio, Sibley, of Georgia, and Cochran, of Kentucky, all of whom favor an increased allowance for witnesses and jurors, but raise some of the questions which have been raised here as to whether it may not be better to provide an additional per diem allowance rather than to proceed to equalize the situation in the way suggested.

Mr. GORMAN. You would not have any objection to a change in your bill that would make payment of a flat rate to jurors?

Mr. BURNES. Personally, as I have said, I am interested in getting needed relief, but at the lowest possible expense to the Government. I think this plan proposed is workable and that it is a most equitable one, but, on the other hand, if the committee sees fit to amend the bill so as to provide for a flat increase, I would be very glad to have it do so, but I think we would have more difficulty in getting that through Congress, especially as a flat increase throughout has not the approval of the Department of Justice.

Mr. GORMAN. The Chairman raised a point that you did not answer, about the man who ordinarily lives within a distance so that he can be in court each day, and yet on account of unusual and extraordinary conditions, is detained for such a length of time that he can not get home on a particular day?

Mr. BURNES. I forgot to answer that. Of course, if a jury is already detained, that is, if they are on a case where they are not allowed to be at liberty during the trial of the case or during their deliberations, then their expenses are taken care of, as I understand it, by the Government.

Mr. DOMINICK. Suppose one would be discharged from consideration of a case at 9 or 10 o'clock at night, an unreasonable hour for him to attempt to drive 20 or 30 miles home?

Mr. BURNES. If he deemed it worth while to ask for an allowance for that day he would get it, because the bill plainly covers it, and it would simply mean filling out a blank certificate for that day,

and pay him accordingly. That is all there would be to it. I do not myself think there would be so much difficulty in administering this provision as some people think. My thought in that regard seems to be borne out by the great majority of the judges.

Mr. DOMINICK. It would take extra clerks in every United States marshal's office in the country to keep tab of witnesses and jurors from a distance.

Mr. BURTNESS. Assuming that it did, to which I do not agree, it would be a very good investment. But, as a matter of fact, in most courts the clerk is not such a busy individual, and he could easily take care of it and prepare the certificates, lay them before the judge and about all the judge would do is briefly check them over and sign the certificates. But in the busiest courts, where court is held most of the time during the year in one place, it might well be that an additional clerk would be required in the office, but even so it would be a good investment, for the money that would be saved by this plan rather than the adoption of a flat per diem raise applicable to everybody would much more than pay the clerk's salary.

I have some letters here from district attorneys presented from a little different angle. One is from Mr. Dogherty, United States attorney for the western district of Wisconsin. He says, among other things; after approving the bill:

It just so happens that prior to receiving your letter I had received from Senator Lenroot a letter written by a witness complaining of the small allowance in witness fees, which letter is inclosed herewith. This is a very typical case. Very frequently poor people have to be called great distances and the sacrifice they are required to make is a real hardship to them.

The letter inclosed is written by a former service man who says that he has been subpoenaed to appear at Madison on a certain day, can not possibly get there; that he had been subpoenaed at two other times and had served, but the two trips had cost him \$50 out of his own pocket, and at this time he did not have the money, so that he could not go.

In a letter written by Mr. Langley, United States attorney for the western district of Arkansas, he says:

As an illustration of the working of the present law, this incident came under my observation during last year.

He then refers to some prosecutions of promoters in fake oil schemes, and continues:

In two of these trials we had one lady witness, a poor, hard working house keeper, who had to come to attend two different trials and was forced to come under subpoena from the court from a point in California, and while the amount that she had invested in these two different promotion schemes amounted to \$100 and was a total loss, she had to expend on the two trips a little more than \$90 more than she received from the Government in mileage and witness fees and I know that she was paid every penny that the law would permit. * * *

Mr. Holden, United States attorney for the southern district of Texas, gives practically similar experiences.

Mr. MAJOR. If you were to fix a flat rate for jurors, what amount would you suggest? The State courts all fix a flat rate for jurors and then allow mileage for distance.

Mr. BURTNESS. I think in the bill I introduced in the Sixty-seventh Congress I suggested a per diem allowance of \$5 for jurors and \$3 for witnesses. Three dollars for a witness is very low where the

witness must leave his home and go to some other town, but we can not expect to put through a very large increase, and if the increase is to be flat one, I do not know but what I would suggest about \$5 for jurors and \$4 for witnesses.

Mr. Danaher, assistant United States attorney for the district of Connecticut, says this:

I have in mind particularly one instance within the last few months involving a removal hearing of a fugitive from the district of Tennessee who was apprehended in Connecticut and as to whom four witnesses appeared in Connecticut from various parts of the State of Tennessee, one such witness appearing under subpoena arrived in South Norwalk with 5 cents in her pocket, and I personally advanced her sufficient funds to go to the United States marshal's office in New Haven, there to receive her return ticket.

One or two of these district attorneys in the letters furnished me all of cases where after the witness had testified, when he was to go home, after he had received the per diem and mileage allowance that was granted by law, they passed the hat among the court officials and jurors to get enough money to take him home.

That is the present situation. There is an interesting but sad story in this large file of letters I have received from judges, district attorneys, and marshals. Lack of time prevents reading them. I feel intensely on this matter. I was very much disappointed when the full committee last year did not act upon the favorable recommendation of the subcommittee and report out some sort of bill touching this very important proposition. It is more than a matter of dollars and cents to these witnesses and jurors. It involves the very fundamentals of the administration of justice. I think individual members of Congress would be interested if they could see these letters from the judges and other officials who live in the districts they represent, although I think it would burden the record so much to put all these letters in.

I submit, however, the following lists of United States district attorneys and marshals who have by letters in my possession here approved this bill. Where they have qualified their approval I have so indicated on the lists.

The following United States district attorneys have indorsed the bill as written:

Hon. Seth Richardson, North Dakota.
Hon. W. H. Dougherty, Wisconsin.
Hon. S. S. Langley, Arkansas.
Hon. H. M. Holden, Texas.
Hon. John A. Danaher, Connecticut.
Hon. Harold P. Williams, Massachusetts.
Hon. Elliott Northcott, West Virginia.
Hon. Fred Cubberly, Florida.
Hon. George Springmeyer, Nevada.
Hon. Aubrey Boyles, Alabama.
Hon. Edward J. Bowmen, Michigan.
Hon. Thomas Williamson, Illinois.
Hon. W. S. Ball, Kentucky.
Hon. David J. Reinhardt, Delaware.
Hon. Albert Ward, Indiana.
Hon. Albert D. Walton, Wyoming.
Hon. Howard Ellis (assistant), Michigan.
Hon. Delos G. Smith, Michigan.
Hon. Irving B. Tucker, North Carolina.
Hon. George C. Taylor, Tennessee.

The following United States district attorneys have indicated sympathetic consideration for increased allowances, but have not indorsed all of the specific provisions in the bill under consideration:

Hon. C. B. Kennamer, Alabama.
 Hon. George Neuner, Oregon.
 Hon. Joseph A. Tolbert, South Carolina.
 Hon. A. B. Dunsinore, Pennsylvania.

Hon. M. A. Hildreth, who served the district of North Dakota as United States District Attorney for something like eight years, was perhaps the first one to emphasize to me the difficulty encountered by prosecuting officers under the present inadequate fees for witnesses, and from his experience has heartily indorsed the principle of this proposed legislation.

Hon. Charles H. Hogg, assistant United States attorney for the district of Hawaii, indorses the bill except that he submits reasons why the mileage of witnesses and jurors coming from other islands than Oahu should be greater than 5 cents per mile so as to cover the actual steamship passenger fare. He submits a table showing exact costs which would indicate that an allowance of 8 cents per mile would approximately be sufficient to cover such fare.

The following United States marshals have indorsed the bill as written:

Hon. J. F. Shea, North Dakota.
 Hon. Hugh L. Patton, Wyoming.
 Hon. Siegel Workman, West Virginia.
 Hon. Henry G. Beard, Oklahoma.
 Hon. Frank Matthews, Pennsylvania.
 Hon. J. E. McClure, Illinois.
 Hon. Phil E. Baer, Texas.
 Hon. Henry F. Cooper, Oklahoma.
 Hon. John H. Glass, Pennsylvania.
 Hon. Walter S. Money, Delaware.
 Hon. S. L. Gross, Texas.
 Hon. J. H. Fulmer, Nevada.
 Hon. Joseph Fritsch, jr., New York.

Hon. Clarence G. Smithers, United States marshal for the eastern district of Virginia, approves the general principle of the bill, but suggests an amendment so that mileage would be allowed each day to witnesses and jurors returning home; the total mileage each day, however, not to exceed subsistence allowance.

Hon. George A. Stauffer, United States marshal for the northern district of Ohio, is the only marshal who has written me commenting upon the extra burden which would be caused by a subsistence allowance. He, however, strongly recommends an increase in the per diem compensation.

STATEMENT OF HON. ELBERT S. BRIGHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. BRIGHAM. H. R. 6092 is a duplicate of S. 1209 introduced in the Senate by Senator Greene on December 10, 1925. A similar bill, S. 3894, was introduced by Senator Greene in the Senate on January 5, 1925, but was not acted upon during that session of Congress. It was Senator Greene's object, as I understand it, in introducing this bill, to adjust the allowances for witnesses and

jurors in the Federal courts so that they will be more in conformity with present costs.

There have been many protests in regard to the inadequacy of this compensation under present conditions, and this bill was prepared by the legislative drafting service to meet the contingency. The situation which exists in my district, a situation which I think also exists in the northeastern section of the country, is illustrated by a letter from Richard M. Campbell, of Dorset, Vt., to Senator Greene relative to his experience in serving on the Federal grand jury at Rutland, Vt., in 1924. Mr. Campbell said, in part:

Part of R. M. Campbell's letter to Senator Greene. November 14, 1924:

Last month I had the pleasure of serving on the Federal grand jury at Rutland, Vt. The men on the jury were as fine a lot as one would wish to meet and most of them had served the State in the legislature at one time or another. Judge Howe will tell you that our work was well done. In fact we made a record, 122 cases presented and 117 true bills.

When we were discharged we found that for our time and work we received the sum of \$3 a day. Most of us were under an expense of at least \$4 a day and none of us who came from a distance could live for less than three a day. At least half—if not more—had to hire some one to take their place while away from home at an expense of three to four dollars a day as well as pay their house expenses. You can easily understand that at the end of the term those men were out of pocket and felt they had been unjustly treated. Few were able to afford it. I was more fortunate than most, as being a widower I closed my house and so saved home expenses. As it was I barely came out even.

For the benefit of future service I would suggest that a bill be introduced in our next Congress increasing the pay of United States jurymen—grand and petit—to not least \$5 a day and the mileage to 15 cents. Do you not think I am right? Vermont pays her men for the same work \$4 a day and it does seem as if men who are chosen to serve the United States should receive a little more than Vermont pays its men for the same work. Judge Howe, in dismissing us, spoke of the inadequate pay and regretted that it was so.

I wish also to submit to the committee letters of Hon. Harland B. Howe, judge, United States District Court of Vermont, and Hon. Harry B. Amey, United States attorney for the district of Vermont. (The letters referred to are as follows:)

BURLINGTON, VT., January 26, 1925.

DEAR MR. CAMPBELL:—Thank you for sending me a copy of the bill which Senator Greene has introduced in Congress increasing the compensation of witnesses and jurors. I hope it will pass. It was nice of you to go to the pains to prevail upon the Senator to take this action. With compliments of the senator. I am,

Yours sincerely,

HARLAND B. HOWE,
Judge United States Circuit Court, District of Vermont.

DEPARTMENT OF JUSTICE,
OFFICE OF UNITED STATES ATTORNEY, DISTRICT OF VERMONT,
Burlington, January 29, 1925.

HON. FRANK L. GREENE,
*United States Senator,
Washington, D. C.*

DEAR FRANK:—I have carefully examined S. 3894 relating to the fees of witnesses and jurors, and wish to congratulate you upon your attempt to secure for witnesses and jurors some fair degree of compensation.

In the district of Vermont, we have been seriously embarrassed on account of inadequate fees, especially for witnesses. At our regular terms of court there are frequently present from 50 to 75 not one time. Many of them are

without funds. Ordinarily, they can not live on less than \$3 per day, yet they receive only \$1.50 per day. They are continually importuning myself and the other court officers to get away because they have no money to pay their board. We are obliged to keep them in attendance, to secure a proper administration of justice.

In numerous instances, I have taken money from my pocket for which no remuneration has been received and paid it over to assist witnesses in their distress.

The Department of Justice in Vermont is most assuredly eager to have this Bill passed; and, in its advancement, I hope you will have the highest degree of success.

Yours with kind regards,

HARRY B. AMEX, *United States Attorney.*

**STATEMENT OF HON. HAMPTON P. FULMER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF SOUTH CAROLINA**

Mr. FULMER. I am delighted to have the privilege of coming before your committee this morning in behalf of my bill, H. R. 5817. I am not especially wedded to my bill, which deals exclusively with increased pay to jurors, but I want to be helpful in the matter in doing justice to these people who have served our Government. It is just a matter of whether or not we propose to be fair with these people, and a matter of whether or not Congress proposes to be fair to men who have served the Government at the command of the Government as jurors. As my colleague has said a few moments ago, I believe practically every Federal judge in the United States stands for some increased pay. I am not an attorney. I never have acted in the capacity of juror, but I have come in contact with a great many of them. I have talked to a great many judges, and in every instance they think jurors should have increased pay. I believe about 25 years ago the pay of jurors was increased from \$2 to \$3. In the meantime practically everybody in every line have had an increase in salary. I have here this morning, which I wish to insert in the record, a letter from Mr. Allen, of Charleston, S. C., written to my colleague, Mr. McMillan, Congressman from the Charleston district, which I will read.

(The letter referred to is as follows:)

CHARLESTON, S. C., November 15, 1925.

Hon. T. S. McMILLAN,

Congressman from South Carolina,

Charleston, S. C.

DEAR SIR: I have just had the penalty imposed upon me of having to sit on the United States court as a petit juror, sitting at Columbia, and it is bad enough to have to give up your business for a week, but it is worse and unjust when you do not get enough from the Government to pay your expenses.

Years ago, when \$3 was \$3 the Government paid jurors that amount, and now that it is only worth half they still pay the same \$3. A bill should be introduced raising the pay of a juror on the Federal court to \$5 a day and even then he may get by with it.

This is not a plea for myself, but for the men that the Government wants to sit on their cases. I think that if you were to write to the different judges that they will bear out my statement.

I am inclosing my expenditures at Columbia to show that I was no extravagant liver.

Hoping that you will look into this and give the man that wants to do his duty, some relief. I am

Yours sincerely,

R. H. ALLAN.

Train fare and sleeper, Charleston to Columbia	\$7. 65
Street car to train (token)	.06½
Breakfast, Columbia	.70
Lunch, Columbia	.65
Dinner, Columbia	.70
Monday total	9.76
Breakfast, Y. W. C. A. cafeteria	.24
Lunch, Y. W. C. A. cafeteria	.55
Dinner, Y. W. C. A. cafeteria	1.25
Tuesday total	11.80
Lunch	.13
Lunch	.25
Dinner	1.25
Wednesday total	14.43
Breakfast	.40
Lunch	1.75
Dinner (Invited out)	
Thursday total	16.58
Breakfast	.85
Lunch	.40
Dinner	1.00
Friday total	18.83
Breakfast	.20
Taxi to station (no street cars)	.50
Hotel bill for five days	15.00
Rail road fare to Charleston	4.65
Street car home from station	.06
Total for week	39.24½
Home paper five days	.25
	39.49
Received as pay from United States	33.90
Loss	5.59

Lost one week from work, sat on one case, and killed time listening to bootleggers plead guilty and get small fines or sentences.

This should be rectified: It is not just the money but the principle of the thing.

In listening to Mr. Burtress, I believe you should report a bill, just a simple bill without all of this red tape. I am not against my friend's bill. I believe he proposes to do the same thing the rest of the Members propose to do, and I think you should bring out a bill with a flat per diem for jurors as well as witnesses, if you propose to increase the pay of witnesses, and if you should see fit to report my bill I would not object to an amendment for increasing the pay of witnesses. I am heartily in favor of this and hope that the committee will at this time report some bill increasing the pay of these men who have served for an amount that will not pay their expenses.

STATEMENT OF HON. JOHN McDUFFIE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. McDUFFIE. I think that everybody throughout the country is agreed that the pay of a juror certainly, and probably witnesses, too, ought to be increased. I introduced a bill not to change the pay of the witnesses, but of jurors, thinking that the one differed

from the other in that a juror had to spend a week or three weeks and a witness would go and spend a day, as a rule, and then go back home. However, I think it is fair to increase both. Since listening to this hearing this morning, and suggestions made by you gentlemen of the committee as to discretion lodged somewhere in the court as to what sort of certificate might be issued in any particular case in the contingencies that might arise, I think it will be better in the end, if you will pardon the suggestion, that you simply raise the per diem of jurors and witnesses, as I suggested, to \$5 for the jurors, and I have not suggested as to the witness, but I do think you ought to raise the witness to \$3, \$5 and \$3, with the present mileage, but I do not know that I would go into the question of trying to provide subsistence. That seems fair, but will cause trouble. I served in the State courts as prosecuting official for about 10 years. In my State there are three Federal judges to about 2,500,000 people. We have a northern, middle, and southern district. There are 67 counties in my State. That is an average of about 22 counties in each jurisdiction. Some of those jurors have to go 200 to 300 miles in order to go to court. Federal courts, as you know, are held in the cities, and you take the average man, the average farmer, whose income is small indeed, and yet is a splendid citizen, it is a real hardship on him to go to town to maintain himself and serve his country in that way on the jury.

When this law was written, section 852, \$3 would buy probably what \$6.50 would buy now, and while I would not try to fix the pay of the juror or witness so high that it would make it an attractive proposition to him, at the same time, I know personally of the hardship that is imposed upon the average juror in my country, especially lately has it been noticeable because of the increased activities of the Federal courts growing out of the enforcement of the Volstead law. These men brought from their farms 200 miles to a city can not be comfortable in that city spending a week or two there, to say nothing of the loss of time. I do not think they can make quite as good jurors as they would make if they did not feel somewhat doubtful of the finances of the situation. I think I can speak for Judge Brand who was here, for Georgia, and Judge Sandlin for Louisiana. I think we are of one accord throughout the country that this Congress ought to do something in the way of giving relief along that line. I will suggest to you, if you will pardon my doing so, for the subcommittee to urge upon the full committee to put this bill among probably a few selected bills that you will take up on calendar Wednesday. I do not know what your rules may be, and I hope I will not violate the proprieties of the occasion, but let us try to get relief through this Congress for the pay of jurors.

I thank you very much for the privilege of coming here, and I think I speak the sentiments of every man in the South as far as I have heard them express themselves in Congress, to the effect that it is nothing but justice and fair play for us to make the change in view of the increased cost of living and the fact that the actual expenses for these witnesses and jurors has been actually doubled. Since that statute was passed it has been more than doubled, and I would suggest raising the per diem to \$5 for jurors and \$3 for witnesses. That at least should be done, if nothing more. I think

that eliminates the trouble suggested by Mr. Dominick, and probably would eliminate any other red tape in the department in the practical administration of this law.

Mr. FULMER. I will add that my bill proposes \$5 for the pay of Federal jurors.

Mr. BURTNESS. Did you have a witness bill?

Mr. FULMER. No.

Mr. BURTNESS. The mentioning by Mr. McDuffie of Mr. Sendlin and Mr. Brand reminded me of the fact that quite a number of Members of Congress have asked me to say to you that they favor legislation of this type. I do not recall now just who they all were; Mr. Newton, of Minnesota, Mr. Hayden, of Arizona, and Mr. Jarrett, the Hawaiian delegate, are among them.

Mr. BOES. I think it is practically unanimous.

Mr. BURTNESS. I will also make this statement, to remind you again, that witnesses are not now paid for the time consumed in going to court and returning from court, and if it is decided to simply increase the per diem allowance that wants to be borne in mind. That is covered by the language in my bill. There is at the present time that unjust discrimination between jurors and witnesses, and I presume before you finally pass upon the matter you will have some representative of the Department of Justice appear before the subcommittee.

Mr. BOES. I do not think we are going to need them to make out our report to the full committee.

Mr. BURTNESS. I thought possibly you wanted to hear from them. They are interested in the special provision that takes certain States that are named in the last paragraph of section 2 of my bill, out of certain specific provisions that are now found in the law, and would place them under the general provisions proposed in H. R. 120.

Mr. STOBBS. Those particular States you have reference to in your bill are States where they now receive double compensation?

Mr. BURTNESS. Double mileage or triple mileage. When the special act was enacted there were practically no railroads there, and they had to travel by stage, etc., and it gave them additional allowance then, but now those States are practically on a par with other States. There are a few places where they may still have to travel by stage, and I would not want those rights for larger compensation taken away now unless all the rest of the jurors and witnesses are given fair enough treatment so that the general treatment given to all would also be fair to those particular States. I think it would be too bad if you just wipe out these special privileges to these people unless you give general relief ample to all of them.

(Thereupon, the subcommittee adjourned to meet again at 10 o'clock a. m., Monday, February 8, 1926.)

REPORT ON H. R. 120

To the Committee on the Judiciary of the House:

Your Subcommittee No. 2, to which was submitted H. R. 120, report:

Rewrite the title of the bill as follows:

"Fixing the fees of jurors and witnesses in the United States courts, including the District Court of Hawaii, the District Court of Porto Rico, and the Supreme Court of the District of Columbia."

Preserve the enacting clause; strike out all after the enacting clause, and add:

"That jurors and witnesses (other than witnesses who are salaried employees of the Government, and detained witnesses) in the United States courts, including the District Court of Hawaii, the District Court of Porto Rico, and the Supreme Court of the District of Columbia, who attend, including those attending before United States commissioners, shall, when the fact is certified by the order of the court, or the clerk thereof, and in matters before the commissioners, by the commissioner, for payment, be entitled to a per diem for each day of actual attendance, and for each day necessarily occupied in traveling to attend court, or upon the commissioner, and return home, and, in addition, traveling expenses as hereinafter provided.

"SEC. 2. Jurors attending in such courts, or before such United States commissioners, shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same, \$— and 5 cents per mile for going from his or her place of residence to the place of trial or hearing, and 5 cents per mile for returning.

"SEC. 3. Witnesses attending in such courts, or before such commissioners, shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same, \$— and 5 cents per mile for going from his or her place of residence to the place of trial or hearing, and 5 cents per mile for returning.

"SEC. 4. Jurors and witnesses in the United States courts, or before a United States commissioner, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall receive for each day's attendance and for traveling expenses the same fees as jurors and witnesses in the other States of the Union, as herein provided.

"SEC. 5. All laws or parts of laws in so far as they are in conflict with the provisions of this act are repealed. This act to be effective immediately upon its passage and approval."

It will be observed that your subcommittee makes no recommendations as to the per diem of either the jurors or witnesses, preferring to submit the consideration thereof to the full committee.

W. D. BOIES,
Chairman









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